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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/594,405

06/15/2000

Josephus Martinus Maria Van Gastel

PHN-17.489

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EXAMINER

TUGBANG, ANTHONY D

ART UNIT

PAPER NUMBER

3729

MAIL DATE

DELIVERY MODE

04/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/594,405

Applicant(s)

VAN GASTEL, JOSEPHUS  
MARTINUS MARIA

Examiner

A. Dexter Tugbang

Art Unit

3729

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address.--

THE REPLY FILED 21 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

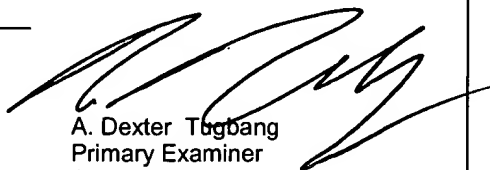
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Attachment.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

  
A. Dexter Tugbang  
Primary Examiner  
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Attachment to Advisory Action

The applicant(s) arguments in the request for reconsideration filed March 21, 2007 have been fully considered but they are not persuasive.

Finality

Persuant to MPEP § 707.06(a), the finality of the rejection in the Office Action mailed on January 5, 2007 is considered to be proper as the applicant(s) amended the claims in their response filed on March 16, 2006. This amendment clearly narrowed the scope of the claims, significantly enough to cause a second and subsequent action (from the first action mailed on December 16, 2005) with a new grounds of rejection. Although the panel decision from the Pre-Appeal Brief Review may have vacated the rejection in the Office Action mailed on May 24, 2006, the Office Action mailed on January 5, 2007 is still considered to be a second action that can be properly made final based on the amendment of March 16, 2006. Accordingly, the finality of the Office Action mailed on January 5, 2007 is maintained.

Prior Art

In regards to the merits of the Prior Art, the applicant(s) urge that neither Akatsuchi nor Goedecke et al teach “wherein...X-direction” (lines 11-14 of Claim 1). The examiner’s position is that this wherein clause does not further limit the structure of the claims as these limitations are apparently directed to the function or operation of the apparatus/machine. It has been well settled in the courts that claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

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More importantly, the combination of Akatsuchi and Goedecke would inherently be capable of meeting this function. The modification of Akatsuchi would attach another placement head on the very same Y-slide because Goedecke teaches that it is well known to have two placement heads on the very same Y-slide. So movement of one placement head a certain distance in the X-direction would cause a simultaneous, dependent movement of the second placement head over the very same distance in the X-direction because both placement heads are attached to the very same Y-slide and this Y-slide would move a certain distance in the X-direction, all of which is to position and proper mounting of the components.

Therefore, the rejections of Akatsuchi and Goedecke are maintained.